

SENATE BILL No. 114

DIGEST OF INTRODUCED BILL

Citations Affected: IC 16-31-3-14.5; IC 16-42-3-4; IC 25-1-1.1; IC 31-30-1-4; IC 34-24-1-1; IC 35-38-1-7.1; IC 35-42-1-1; IC 35-45-6-1; IC 35-47-4-5; IC 35-48-4; IC 35-50-2-2; IC 35-50-2-9.

Synopsis: Methamphetamine. Makes the criminal penalties for offenses relating to methamphetamine equivalent to the penalties for offenses relating to cocaine. Makes conforming changes to other statutes governing cocaine and narcotic drug offenses to incorporate offenses relating to methamphetamine, including: (1) specifying that a juvenile court does not have jurisdiction over a person for allegedly dealing in methamphetamine; (2) providing that if a person commits possessing or dealing in methamphetamine, certain occupational and professional licenses and certifications held by the person may be revoked or suspended; and (3) providing that certain property used by the person to commit the offense may be seized.

Effective: July 1, 2001.

Bray

January 8, 2001, read first time and referred to Committee on Judiciary.



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First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

SENATE BILL No. 114

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 16-31-3-14.5 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 14.5. The commission
3 may permanently revoke a license or certificate under procedures
4 provided by section 14 of this chapter if the individual who holds the
5 license or certificate issued under this title is convicted of any of the
6 following:
- 7 (1) Dealing in cocaine, ~~or~~ a narcotic drug, **or methamphetamine**
8 under IC 35-48-4-1.
 - 9 (2) Dealing in a schedule I, II, or III controlled substance under
10 IC 35-48-4-2.
 - 11 (3) Dealing in a schedule IV controlled substance under
12 IC 35-48-4-3.
 - 13 (4) Dealing in a schedule V controlled substance under
14 IC 35-48-4-4.
 - 15 (5) Dealing in a substance represented to be a controlled
16 substance under IC 35-48-4-4.5.
 - 17 (6) Knowingly or intentionally manufacturing, advertising,



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distributing, or possessing with intent to manufacture, advertise, or distribute a substance represented to be a controlled substance under IC 35-48-4-4.6.

(7) Dealing in a counterfeit substance under IC 35-48-4-5.

(8) Dealing in marijuana, hash oil, or hashish under IC 35-48-4-10(b).

(9) Conspiracy under IC 35-41-5-2 to commit an offense listed in subdivisions (1) through (8).

(10) Attempt under IC 35-41-5-1 to commit an offense listed in subdivisions (1) through (8).

(11) A crime of violence (as defined in IC 35-50-1-2(a)).

(12) An offense in any other jurisdiction in which the elements of the offense for which the conviction was entered are substantially similar to the elements of an offense described under subdivisions (1) through (11).

SECTION 2. IC 16-42-3-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 4. A drug or device is considered to be misbranded under any of the following conditions:

(1) If the labeling of the drug or device is false or misleading in any way.

(2) If the drug or device is in package form unless the drug or device bears a label containing:

(A) the name and place of business of the manufacturer, packer, or distributor; and

(B) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count.

However, under clause (B) reasonable variations shall be permitted and exemptions as to small packages shall be established by rules adopted by the state department.

(3) If any word, statement, or other information required to appear on the label or labeling, under this chapter or a rule adopted under IC 16-42-1-2 is not prominently placed on the drug or device with conspicuousness (as compared with other words, statements, designs, or devices in the labeling) and in such terms that make the label likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(4) If the drug or device:

(A) is for use by humans; and

(B) contains any quantity of the narcotic or hypnotic substance alpha-eucaine, barbituric acid, beta-eucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marijuana, morphine, opium, paraldehyde, peyote, ~~or~~ **methamphetamine**,

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1 **or** sulphonmethane, or any chemical derivative of such
 2 substance, which derivative after investigation has been found
 3 to be and is designated as habit forming, by rules adopted by
 4 the state department under IC 16-42-1 through IC 16-42-4 or
 5 by regulations issued under 21 U.S.C. 352(d);
 6 unless the label on the drug or device bears the name and quantity
 7 or proportion of that substance or derivative and the statement
 8 "Warning - May Be Habit Forming".

9 (5) If a drug, unless the following conditions are met:

10 (A) The label on the drug bears, to the exclusion of any other
 11 nonproprietary name except the applicable systematic
 12 chemical name or the chemical formula, the following:

13 (i) The established name of the drug, if any.

14 (ii) If the drug is fabricated from at least two (2) ingredients,
 15 the established name and quantity of each active ingredient,
 16 including the kind and quantity or proportion of any alcohol
 17 and, whether active or not, the established name and
 18 quantity or proportion of any bromides, ether, chloroform,
 19 acetanilid, acetphenetidin, amidopyrine, antipyrine, atropine,
 20 hyoscine, hyoscyamine, arsenic, digitalis, digitalis
 21 glucosides, mercury, ouabain, strophanthin, strychnine,
 22 thyroid, or any derivative or preparation of those substances
 23 contained in the drug. However, the requirement for stating
 24 the quantity of the active ingredients, other than the quantity
 25 of those specifically named in this subdivision, applies only
 26 to prescription drugs.

27 (B) If a prescription drug, the established name of the drug or
 28 ingredient on the label (and on any labeling on which a name
 29 for the drug or ingredient is used) is printed prominently and
 30 in type at least half as large as that used for any proprietary
 31 name or designation for the drug or ingredient.

32 However, to the extent that compliance with the requirements of
 33 clause (A)(ii) or clause (B) is impracticable, exemptions shall be
 34 allowed under rules adopted by the state department or by
 35 regulations promulgated under the Federal Act.

36 (6) Unless the drug's or device's labeling bears:

37 (A) adequate directions for use; and

38 (B) adequate warnings against use in those pathological
 39 conditions or by children where the drug's or device's use may
 40 be dangerous to health or against unsafe dosage or methods or
 41 duration of administration or application in the manner and
 42 form that is necessary for the protection of users.

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However, if any requirement of clause (A) as applied to any drug or device is not necessary for the protection of the public health, the state department shall adopt rules exempting the drug or device from that requirement.

(7) If a drug purports to be a drug the name of which is recognized in an official compendium, unless the drug is packaged and labeled as prescribed in the compendium. However, the method of packing may be modified with the consent of the state department in accordance with regulations promulgated by the federal security administrator under the Federal Act. Whenever a drug is recognized in both the United States Pharmacopoeia and the Homeopathic Pharmacopoeia of the United States, the drug is subject to the requirements of the United States Pharmacopoeia with respect to packaging and labeling unless the drug is labeled and offered for sale as a homeopathic drug. In that case the drug is subject to the Homeopathic Pharmacopoeia of the United States and not to the United States Pharmacopoeia.

(8) If a drug or device has been found by the federal security administrator or the state department to be a drug liable to deterioration, unless the drug or device is packaged in a form and manner and the drug's or device's label bears a statement of such precautions as the federal security administrator or the state department requires by rule or regulation as necessary for the protection of the public health. A rule or regulation may not be established for any drug recognized in an official compendium until the federal security administrator or the state department informs the appropriate body charged with the revision of the compendium of the need for the packaging or labeling requirements and that body fails within a reasonable time to prescribe requirements.

(9) If a drug's container is made, formed, or filled as to be misleading.

(10) If a drug is an imitation of another drug.

(11) If a drug is offered for sale under the name of another drug.

(12) If a drug is or purports to be or is represented to be a drug composed wholly or partly of insulin, unless:

(A) the drug is from a batch with respect to which a certificate or release has been issued under Section 506 of the Federal Act; and

(B) the certificate or release is in effect with respect to the drug.

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(13) If a drug is or purports to be or is represented to be a drug composed wholly or partly of any kind of penicillin, streptomycin, chlortetracycline, chloramphenicol, bacitracin, or any other antibiotic drug, or any derivative of those drugs, unless:

(A) the drug is from a batch with respect to which a certificate or release has been issued under Section 507 of the Federal Act; and

(B) the certificate or release is in effect with respect to that drug.

However, this subdivision does not apply to any drug or class of drugs exempted by regulations promulgated under Section 507(c) or 507(d) of the Federal Act.

(14) If a drug or device is dangerous to health when used in the dosage, or with the frequency or duration prescribed, recommended, or suggested in the labeling of the drug or device.

(15) Under the conditions described in section 6 of this chapter.

SECTION 3. IC 25-1-1.1-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 2. A board, a commission, or a committee may suspend or revoke a license or certificate issued under this title by the board, the commission, or the committee if the individual who holds the license or certificate is convicted of any of the following:

(1) Possession of cocaine, ~~or~~ a narcotic drug, **or methamphetamine** under IC 35-48-4-6.

(2) Possession of a controlled substance under IC 35-48-4-7(a).

(3) Fraudulently obtaining a controlled substance under IC 35-48-4-7(b).

(4) Manufacture of paraphernalia as a Class D felony under IC 35-48-4-8.1(b).

(5) Dealing in paraphernalia as a Class D felony under IC 35-48-4-8.5(b).

(6) Possession of paraphernalia as a Class D felony under IC 35-48-4-8.3(b).

(7) Possession of marijuana, hash oil, or hashish as a Class D felony under IC 35-48-4-11.

(8) Maintaining a common nuisance under IC 35-48-4-13.

(9) An offense relating to registration, labeling, and prescription forms under IC 35-48-4-14.

(10) Conspiracy under IC 35-41-5-2 to commit an offense listed in subdivisions (1) through (9).

(11) Attempt under IC 35-41-5-1 to commit an offense listed in subdivisions (1) through (9).

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(12) An offense in any other jurisdiction in which the elements of the offense for which the conviction was entered are substantially similar to the elements of an offense described under subdivisions (1) through (11).

SECTION 4. IC 25-1-1.1-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 3. A board, a commission, or a committee shall revoke or suspend a license or certificate issued under this title by the board, the commission, or the committee if the individual who holds the license or certificate is convicted of any of the following:

(1) Dealing in cocaine, ~~or~~ a narcotic drug, **or methamphetamine** under IC 35-48-4-1.

(2) Dealing in a schedule I, II, or III controlled substance under IC 35-48-4-2.

(3) Dealing in a schedule IV controlled substance under IC 35-48-4-3.

(4) Dealing in a schedule V controlled substance under IC 35-48-4-4.

(5) Dealing in a substance represented to be a controlled substance under IC 35-48-4-4.5.

(6) Knowingly or intentionally manufacturing, advertising, distributing, or possessing with intent to manufacture, advertise, or distribute a substance represented to be a controlled substance under IC 35-48-4-4.6.

(7) Dealing in a counterfeit substance under IC 35-48-4-5.

(8) Dealing in marijuana, hash oil, or hashish under IC 35-48-4-10(b).

(9) Conspiracy under IC 35-41-5-2 to commit an offense listed in subdivisions (1) through (8).

(10) Attempt under IC 35-41-5-1 to commit an offense listed in subdivisions (1) through (8).

(11) An offense in any other jurisdiction in which the elements of the offense for which the conviction was entered are substantially similar to the elements of an offense described under subdivisions (1) through (10).

(12) A violation of any federal or state drug law or rule related to wholesale legend drug distributors licensed under IC 25-26-14.

SECTION 5. IC 31-30-1-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 4. (a) The juvenile court does not have jurisdiction over an individual for an alleged violation of:

(1) IC 35-42-1-1 (murder);

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- (2) IC 35-42-3-2 (kidnapping);
 - (3) IC 35-42-4-1 (rape);
 - (4) IC 35-42-4-2 (criminal deviate conduct);
 - (5) IC 35-42-5-1 (robbery) if:
 - (A) the robbery was committed while armed with a deadly weapon; or
 - (B) the robbery results in bodily injury or serious bodily injury;
 - (6) IC 35-42-5-2 (carjacking);
 - (7) IC 35-45-9-3 (criminal gang activity);
 - (8) IC 35-45-9-4 (criminal gang intimidation);
 - (9) IC 35-47-2-1 (carrying a handgun without a license);
 - (10) IC 35-47-10 (children and firearms);
 - (11) IC 35-47-5-4.1 (dealing in a sawed-off shotgun);
 - (12) IC 35-48-4-1 (dealing in cocaine, ~~or~~ a narcotic drug, **or methamphetamine**);
 - (13) IC 35-48-4-2 (dealing in a schedule I, II, or III controlled substance);
 - (14) IC 35-48-4-3 (dealing in a schedule IV controlled substance);
 - or
 - (15) any offense that may be joined under IC 35-34-1-9(a)(2) with any crime listed in subdivisions (1) through (14);
- if the individual was at least sixteen (16) years of age at the time of the alleged violation.

(b) Once an individual described in subsection (a) has been charged with any crime listed in subsection (a)(1) through (a)(15), the court having adult criminal jurisdiction shall retain jurisdiction over the case even if the individual pleads guilty to or is convicted of a lesser included offense. A plea of guilty to or a conviction of a lesser included offense does not vest jurisdiction in the juvenile court.

SECTION 6. IC 34-24-1-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 1. (a) The following may be seized:

- (1) All vehicles (as defined by IC 35-41-1), if they are used or are intended for use by the person or persons in possession of them to transport or in any manner to facilitate the transportation of the following:
 - (A) A controlled substance for the purpose of committing, attempting to commit, or conspiring to commit any of the following:
 - (i) Dealing in cocaine, ~~or~~ a narcotic drug, **or methamphetamine** (IC 35-48-4-1).



- 1 (ii) Dealing in a schedule I, II, or III controlled substance
 2 (IC 35-48-4-2).
 3 (iii) Dealing in a schedule IV controlled substance
 4 (IC 35-48-4-3).
 5 (iv) Dealing in a schedule V controlled substance
 6 (IC 35-48-4-4).
 7 (v) Dealing in a counterfeit substance (IC 35-48-4-5).
 8 (vi) Possession of cocaine, ~~or~~ a narcotic drug, **or**
 9 **methamphetamine** (IC 35-48-4-6).
 10 (vii) Dealing in paraphernalia (IC 35-48-4-8.5).
 11 (viii) Dealing in marijuana, hash oil, or hashish
 12 (IC 35-48-4-10).
 13 (B) Any stolen (IC 35-43-4-2) or converted property
 14 (IC 35-43-4-3) if the retail or repurchase value of that property
 15 is one hundred dollars (\$100) or more.
 16 (C) Any hazardous waste in violation of IC 13-30-6-6.
 17 (2) All money, negotiable instruments, securities, weapons,
 18 communications devices, or any property commonly used as
 19 consideration for a violation of IC 35-48-4 (other than items
 20 subject to forfeiture under IC 16-42-20-5 or IC 16-6-8.5-5.1
 21 before its repeal):
 22 (A) furnished or intended to be furnished by any person in
 23 exchange for an act that is in violation of a criminal statute;
 24 (B) used to facilitate any violation of a criminal statute; or
 25 (C) traceable as proceeds of the violation of a criminal statute.
 26 (3) Any portion of real or personal property purchased with
 27 money that is traceable as a proceed of a violation of a criminal
 28 statute.
 29 (4) A vehicle that is used by a person to:
 30 (A) commit, attempt to commit, or conspire to commit;
 31 (B) facilitate the commission of; or
 32 (C) escape from the commission of;
 33 murder (IC 35-42-1-1), kidnapping (IC 35-42-3-2), criminal
 34 confinement (IC 35-42-3-3), rape (IC 35-42-4-1), child molesting
 35 (IC 35-42-4-3), or child exploitation (IC 35-42-4-4).
 36 (5) Real property owned by a person who uses it to commit any of
 37 the following as a Class A felony, a Class B felony, or a Class C
 38 felony:
 39 (A) Dealing in cocaine, ~~or~~ a narcotic drug, **or**
 40 **methamphetamine** (IC 35-48-4-1).
 41 (B) Dealing in a schedule I, II, or III controlled substance
 42 (IC 35-48-4-2).

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- 1 (C) Dealing in a schedule IV controlled substance
 2 (IC 35-48-4-3).
 3 (D) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).
 4 (6) Equipment and recordings used by a person to commit fraud
 5 under IC 35-43-5-4(11).
 6 (7) Recordings sold, rented, transported, or possessed by a person
 7 in violation of IC 24-4-10.
 8 (8) Property (as defined by IC 35-41-1-23) or an enterprise (as
 9 defined by IC 35-45-6-1) that is the object of a corrupt business
 10 influence violation (IC 35-45-6-2).
 11 (9) Unlawful telecommunications devices (as defined in
 12 IC 35-45-13-6) and plans, instructions, or publications used to
 13 commit an offense under IC 35-45-13.
 14 (b) A vehicle used by any person as a common or contract carrier in
 15 the transaction of business as a common or contract carrier is not
 16 subject to seizure under this section, unless it can be proven by a
 17 preponderance of the evidence that the owner of the vehicle knowingly
 18 permitted the vehicle to be used to engage in conduct that subjects it to
 19 seizure under subsection (a).
 20 (c) Money, negotiable instruments, securities, weapons,
 21 communications devices, or any property commonly used as
 22 consideration for a violation of IC 35-48-4 found near or on a person
 23 who is committing, attempting to commit, or conspiring to commit any
 24 of the following offenses shall be admitted into evidence in an action
 25 under this chapter as prima facie evidence that the money, negotiable
 26 instrument, security, or other thing of value is property that has been
 27 used or was to have been used to facilitate the violation of a criminal
 28 statute or is the proceeds of the violation of a criminal statute:
 29 (1) IC 35-48-4-1 (dealing in cocaine, ~~or~~ a narcotic drug, **or**
 30 **methamphetamine**).
 31 (2) IC 35-48-4-2 (dealing in a schedule I, II, or III controlled
 32 substance).
 33 (3) IC 35-48-4-3 (dealing in a schedule IV controlled substance).
 34 (4) IC 35-48-4-4 (dealing in a schedule V controlled substance)
 35 as a Class B felony.
 36 (5) IC 35-48-4-6 (possession of cocaine, ~~or~~ a narcotic drug, **or**
 37 **methamphetamine**) as a Class A felony, Class B felony, or Class
 38 C felony.
 39 (6) IC 35-48-4-10 (dealing in marijuana, hash oil, or hashish) as
 40 a Class C felony.
 41 SECTION 7. IC 35-38-1-7.1, AS AMENDED BY P.L.183-1999,
 42 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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JULY 1, 2001]: Sec. 7.1. (a) In determining what sentence to impose for a crime, the court shall consider:

- (1) the risk that the person will commit another crime;
- (2) the nature and circumstances of the crime committed;
- (3) the person's:
 - (A) prior criminal record;
 - (B) character; and
 - (C) condition;
- (4) whether the victim of the crime was less than twelve (12) years of age or at least sixty-five (65) years of age;
- (5) whether the person violated a protective order issued against the person under IC 31-15 or IC 31-16 (or IC 31-1-11.5 before its repeal) or IC 34-26-2 (or IC 34-4-5.1 before its repeal); and
- (6) any oral or written statement made by a victim of the crime.

(b) The court may consider the following factors as aggravating circumstances or as favoring imposing consecutive terms of imprisonment:

- (1) The person has recently violated the conditions of any probation, parole, or pardon granted to the person.
- (2) The person has a history of criminal or delinquent activity.
- (3) The person is in need of correctional or rehabilitative treatment that can best be provided by commitment of the person to a penal facility.
- (4) Imposition of a reduced sentence or suspension of the sentence and imposition of probation would depreciate the seriousness of the crime.
- (5) The victim of the crime was less than twelve (12) years of age or at least sixty-five (65) years of age.
- (6) The victim of the crime was mentally or physically infirm.
- (7) The person committed a forcible felony while wearing a garment designed to resist the penetration of a bullet.
- (8) The person committed a sex crime listed in subsection (e) and:
 - (A) the crime created an epidemiologically demonstrated risk of transmission of the human immunodeficiency virus (HIV) and involved the sex organ of one (1) person and the mouth, anus, or sex organ of another person;
 - (B) the person had knowledge that the person was a carrier of HIV; and
 - (C) the person had received risk counseling as described in subsection (g).
- (9) The person committed an offense related to controlled substances listed in subsection (f) if:

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- 1 (A) the offense involved:
- 2 (i) the delivery by any person to another person; or
- 3 (ii) the use by any person on another person;
- 4 of a contaminated sharp (as defined in IC 16-41-16-2) or other
- 5 paraphernalia that creates an epidemiologically demonstrated
- 6 risk of transmission of HIV by involving percutaneous contact;
- 7 (B) the person had knowledge that the person was a carrier of
- 8 the human immunodeficiency virus (HIV); and
- 9 (C) the person had received risk counseling as described in
- 10 subsection (g).
- 11 (10) The person committed the offense in an area of a
- 12 consolidated or second class city that is designated as a public
- 13 safety improvement area by the Indiana criminal justice institute
- 14 under IC 36-8-19.5.
- 15 (11) The injury to or death of the victim of the crime was the
- 16 result of shaken baby syndrome (as defined in IC 16-41-40-2).
- 17 (12) Before the commission of the crime, the person administered
- 18 to the victim of the crime, without the victim's knowledge, a
- 19 sedating drug or a drug that had a hypnotic effect on the victim,
- 20 or the person had knowledge that such a drug had been
- 21 administered to the victim without the victim's knowledge.
- 22 (13) The person:
- 23 (A) committed trafficking with an inmate under IC 35-44-3-9;
- 24 and
- 25 (B) is an employee of the penal facility.
- 26 (c) The court may consider the following factors as mitigating
- 27 circumstances or as favoring suspending the sentence and imposing
- 28 probation:
- 29 (1) The crime neither caused nor threatened serious harm to
- 30 persons or property, or the person did not contemplate that it
- 31 would do so.
- 32 (2) The crime was the result of circumstances unlikely to recur.
- 33 (3) The victim of the crime induced or facilitated the offense.
- 34 (4) There are substantial grounds tending to excuse or justify the
- 35 crime, though failing to establish a defense.
- 36 (5) The person acted under strong provocation.
- 37 (6) The person has no history of delinquency or criminal activity,
- 38 or the person has led a law-abiding life for a substantial period
- 39 before commission of the crime.
- 40 (7) The person is likely to respond affirmatively to probation or
- 41 short term imprisonment.
- 42 (8) The character and attitudes of the person indicate that the

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person is unlikely to commit another crime.

(9) The person has made or will make restitution to the victim of the crime for the injury, damage, or loss sustained.

(10) Imprisonment of the person will result in undue hardship to the person or the dependents of the person.

(11) The person was convicted of a crime involving the use of force against a person who had repeatedly inflicted physical or sexual abuse upon the convicted person and evidence shows that the convicted person suffered from the effects of battery as a result of the past course of conduct of the individual who is the victim of the crime for which the person was convicted.

(d) The criteria listed in subsections (b) and (c) do not limit the matters that the court may consider in determining the sentence.

(e) For the purposes of this article, the following crimes are considered sex crimes:

(1) Rape (IC 35-42-4-1).

(2) Criminal deviate conduct (IC 35-42-4-2).

(3) Child molesting (IC 35-42-4-3).

(4) Child seduction (IC 35-42-4-7).

(5) Prostitution (IC 35-45-4-2).

(6) Patronizing a prostitute (IC 35-45-4-3).

(7) Incest (IC 35-46-1-3).

(8) Sexual misconduct with a minor under IC 35-42-4-9(a).

(f) For the purposes of this article, the following crimes are considered offenses related to controlled substances:

(1) Dealing in cocaine, ~~or~~ a narcotic drug, **or methamphetamine** (IC 35-48-4-1).

(2) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).

(3) Dealing in a schedule IV controlled substance (IC 35-48-4-3).

(4) Dealing in a schedule V controlled substance (IC 35-48-4-4).

(5) Possession of cocaine, ~~or~~ a narcotic drug, **or methamphetamine** (IC 35-48-4-6).

(6) Possession of a controlled substance (IC 35-48-4-7).

(7) Dealing in paraphernalia (IC 35-48-4-8.5).

(8) Possession of paraphernalia (IC 35-48-4-8.3).

(9) Offenses relating to registration (IC 35-48-4-14).

(g) For the purposes of this section, a person received risk counseling if the person had been:

(1) notified in person or in writing that tests have confirmed the presence of antibodies to the human immunodeficiency virus (HIV) in the person's blood; and

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(2) warned of the behavior that can transmit HIV.

SECTION 8. IC 35-42-1-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 1. A person who:

- (1) knowingly or intentionally kills another human being;
- (2) kills another human being while committing or attempting to commit arson, burglary, child molesting, consumer product tampering, criminal deviate conduct, kidnapping, rape, robbery, or carjacking;
- (3) kills another human being while committing or attempting to commit:
 - (A) dealing in cocaine, ~~or~~ a narcotic drug, **or methamphetamine** (IC 35-48-4-1);
 - (B) dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2);
 - (C) dealing in a schedule IV controlled substance (IC 35-48-4-3); or
 - (D) dealing in a schedule V controlled substance; or
- (4) knowingly or intentionally kills a fetus that has attained viability (as defined in IC 16-18-2-365);

commits murder, a felony.

SECTION 9. IC 35-45-6-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 1. As used in this chapter:

"Documentary material" means any document, drawing, photograph, recording, or other tangible item containing compiled data from which information can be either obtained or translated into a usable form.

"Enterprise" means:

- (1) a sole proprietorship, corporation, limited liability company, partnership, business trust, or governmental entity; or
- (2) a union, an association, or a group, whether a legal entity or merely associated in fact.

"Pattern of racketeering activity" means engaging in at least two (2) incidents of racketeering activity that have the same or similar intent, result, accomplice, victim, or method of commission, or that are otherwise interrelated by distinguishing characteristics that are not isolated incidents. However, the incidents are a pattern of racketeering activity only if at least one (1) of the incidents occurred after August 31, 1980, and if the last of the incidents occurred within five (5) years after a prior incident of racketeering activity.

"Racketeering activity" means to commit, to attempt to commit, to conspire to commit a violation of, or aiding and abetting in a violation of any of the following:

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- 1 (1) A provision of IC 23-2-1, or of a rule or order issued under
- 2 IC 23-2-1.
- 3 (2) A violation of IC 35-45-9.
- 4 (3) A violation of IC 35-47.
- 5 (4) A violation of IC 35-49-3.
- 6 (5) Murder (IC 35-42-1-1).
- 7 (6) Battery as a Class C felony (IC 35-42-2-1).
- 8 (7) Kidnapping (IC 35-42-3-2).
- 9 (8) Child exploitation (IC 35-42-4-4).
- 10 (9) Robbery (IC 35-42-5-1).
- 11 (10) Carjacking (IC 35-42-5-2).
- 12 (11) Arson (IC 35-43-1-1).
- 13 (12) Burglary (IC 35-43-2-1).
- 14 (13) Theft (IC 35-43-4-2).
- 15 (14) Receiving stolen property (IC 35-43-4-2).
- 16 (15) Forgery (IC 35-43-5-2).
- 17 (16) Fraud (IC 35-43-5-4(1) through IC 35-43-5-4(9)).
- 18 (17) Bribery (IC 35-44-1-1).
- 19 (18) Official misconduct (IC 35-44-1-2).
- 20 (19) Conflict of interest (IC 35-44-1-3).
- 21 (20) Perjury (IC 35-44-2-1).
- 22 (21) Obstruction of justice (IC 35-44-3-4).
- 23 (22) Intimidation (IC 35-45-2-1).
- 24 (23) Promoting prostitution (IC 35-45-4-4).
- 25 (24) Promoting professional gambling (IC 35-45-5-4).
- 26 (25) Dealing in cocaine, ~~or~~ a narcotic drug, **or**
- 27 **methamphetamine** (IC 35-48-4-1).
- 28 (26) Dealing in a schedule I, II, or III controlled substance
- 29 (IC 35-48-4-2).
- 30 (27) Dealing in a schedule IV controlled substance
- 31 (IC 35-48-4-3).
- 32 (28) Dealing in a schedule V controlled substance (IC 35-48-4-4).
- 33 (29) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).
- 34 (30) Money laundering (IC 35-45-15-5).
- 35 SECTION 10. IC 35-47-4-5, AS AMENDED BY P.L.14-2000,
- 36 SECTION 76, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 37 JULY 1, 2001]: Sec. 5. (a) As used in this section, "serious violent
- 38 felon" means a person who has been convicted of:
- 39 (1) committing a serious violent felony in:
- 40 (A) Indiana; or
- 41 (B) any other jurisdiction in which the elements of the crime
- 42 for which the conviction was entered are substantially similar

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to the elements of a serious violent felony; or
 (2) attempting to commit or conspiring to commit a serious
 violent felony in:

(A) Indiana as provided under IC 35-41-5-1 or IC 35-41-5-2;
 or

(B) any other jurisdiction in which the elements of the crime
 for which the conviction was entered are substantially similar
 to the elements of attempting to commit or conspiring to
 commit a serious violent felony.

(b) As used in this section, "serious violent felony" means:

- (1) murder (IC 35-42-1-1);
- (2) voluntary manslaughter (IC 35-42-1-3);
- (3) reckless homicide not committed by means of a vehicle
 (IC 35-42-1-5);
- (4) battery as a Class B felony (IC 35-42-2-1(a)(4)) or Class C
 felony (IC 35-42-2-1(a)(3));
- (5) aggravated battery (IC 35-42-2-1.5);
- (6) kidnapping (IC 35-42-3-2);
- (7) criminal confinement (IC 35-42-3-3);
- (8) rape (IC 35-42-4-1);
- (9) criminal deviate conduct (IC 35-42-4-2);
- (10) child molesting (IC 35-42-4-3);
- (11) sexual battery as a Class C felony (IC 35-42-4-8);
- (12) robbery (IC 35-42-5-1);
- (13) carjacking (IC 35-42-5-2);
- (14) arson as a Class A felony or Class B felony
 (IC 35-43-1-1(a));
- (15) burglary as a Class A felony or Class B felony
 (IC 35-43-2-1);
- (16) assisting a criminal as a Class C felony (IC 35-44-3-2);
- (17) resisting law enforcement as a Class B felony or Class C
 felony (IC 35-44-3-3);
- (18) escape as a Class B felony or Class C felony (IC 35-44-3-5);
- (19) trafficking with an inmate as a Class C felony
 (IC 35-44-3-9);
- (20) criminal gang intimidation (IC 35-45-9-4);
- (21) stalking as a Class B felony or Class C felony
 (IC 35-45-10-5);
- (22) incest (IC 35-46-1-3);
- (23) dealing in cocaine, ~~or~~ a narcotic drug, **or methamphetamine**
 (IC 35-48-4-1);
- (24) dealing in a schedule I, II, or III controlled substance

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(IC 35-48-4-2);

(25) dealing in a schedule IV controlled substance (IC 35-48-4-3);

or

(26) dealing in a schedule V controlled substance (IC 35-48-4-4).

(c) A serious violent felon who knowingly or intentionally possesses a firearm commits unlawful possession of a firearm by a serious violent felon, a Class B felony.

SECTION 11. IC 35-48-4-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 1. (a) A person who:

(1) knowingly or intentionally:

(A) manufactures;

(B) finances the manufacture of;

(C) delivers; or

(D) finances the delivery of;

cocaine, ~~or~~ a narcotic drug, **or methamphetamine**, pure or adulterated, classified in schedule I or II; or

(2) possesses, with intent to:

(A) manufacture;

(B) finance the manufacture of;

(C) deliver; or

(D) finance the delivery of;

cocaine, ~~or~~ a narcotic drug, **or methamphetamine**, pure or adulterated, classified in schedule I or II;

commits dealing in cocaine, ~~or~~ a narcotic drug, **or methamphetamine**, a Class B felony, except as provided in subsection (b).

(b) The offense is a Class A felony if:

(1) the amount of the drug involved weighs three (3) grams or more;

(2) the person:

(A) delivered; or

(B) financed the delivery of;

the drug to a person under eighteen (18) years of age at least three

(3) years junior to the person; or

(3) the person delivered or financed the delivery of the drug:

(A) on a school bus; or

(B) in, on, or within one thousand (1,000) feet of:

(i) school property;

(ii) a public park; or

(iii) a family housing complex.

SECTION 12. IC 35-48-4-6, AS AMENDED BY P.L.188-1999, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 6. (a) A person who, without a valid prescription

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or order of a practitioner acting in the course of the practitioner's professional practice, knowingly or intentionally possesses cocaine (pure or adulterated), ~~or~~ a narcotic drug (pure or adulterated), **or methamphetamine (pure or adulterated)** classified in schedule I or II commits possession of cocaine, ~~or~~ a narcotic drug, **or methamphetamine**, a Class D felony, except as provided in subsection (b).

(b) The offense is:

(1) a Class C felony if:

(A) the amount of the drug involved (pure or adulterated) weighs three (3) grams or more; or

(B) the person was also in possession of a firearm (as defined in IC 35-47-1-5);

(2) a Class B felony if the person in possession of the cocaine, ~~or~~ narcotic drug, **or methamphetamine** possesses less than three (3) grams of pure or adulterated cocaine or narcotic drug:

(A) on a school bus; or

(B) in, on, or within one thousand (1,000) feet of:

(i) school property;

(ii) a public park; or

(iii) a family housing complex; and

(3) a Class A felony if the person possesses the cocaine, ~~or~~ narcotic drug, **or methamphetamine** in an amount (pure or adulterated) weighing at least three (3) grams:

(A) on a school bus; or

(B) in, on, or within one thousand (1,000) feet of:

(i) school property;

(ii) a public park; or

(iii) a family housing complex.

SECTION 13. IC 35-50-2-2, AS AMENDED BY P.L.188-1999, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 2. (a) The court may suspend any part of a sentence for a felony, except as provided in this section or in section 2.1 of this chapter.

(b) With respect to the following crimes listed in this subsection, the court may suspend only that part of the sentence that is in excess of the minimum sentence:

(1) The crime committed was a Class A or Class B felony and the person has a prior unrelated felony conviction.

(2) The crime committed was a Class C felony and less than seven (7) years have elapsed between the date the person was discharged from probation, imprisonment, or parole, whichever



1 is later, for a prior unrelated felony conviction and the date the
 2 person committed the Class C felony for which the person is
 3 being sentenced.

4 (3) The crime committed was a Class D felony and less than three
 5 (3) years have elapsed between the date the person was
 6 discharged from probation, imprisonment, or parole, whichever
 7 is later, for a prior unrelated felony conviction and the date the
 8 person committed the Class D felony for which the person is
 9 being sentenced. However, the court may suspend the minimum
 10 sentence for the crime only if the court orders home detention
 11 under IC 35-38-1-21 or IC 35-38-2.5-5 instead of the minimum
 12 sentence specified for the crime under this chapter.

13 (4) The felony committed was:

- 14 (A) murder (IC 35-42-1-1);
- 15 (B) battery (IC 35-42-2-1) with a deadly weapon;
- 16 (C) sexual battery (IC 35-42-4-8) with a deadly weapon;
- 17 (D) kidnapping (IC 35-42-3-2);
- 18 (E) confinement (IC 35-42-3-3) with a deadly weapon;
- 19 (F) rape (IC 35-42-4-1) as a Class A felony;
- 20 (G) criminal deviate conduct (IC 35-42-4-2) as a Class A
 21 felony;
- 22 (H) child molesting (IC 35-42-4-3) as a Class A or Class B
 23 felony;
- 24 (I) robbery (IC 35-42-5-1) resulting in serious bodily injury or
 25 with a deadly weapon;
- 26 (J) arson (IC 35-43-1-1) for hire or resulting in serious bodily
 27 injury;
- 28 (K) burglary (IC 35-43-2-1) resulting in serious bodily injury
 29 or with a deadly weapon;
- 30 (L) resisting law enforcement (IC 35-44-3-3) with a deadly
 31 weapon;
- 32 (M) escape (IC 35-44-3-5) with a deadly weapon;
- 33 (N) rioting (IC 35-45-1-2) with a deadly weapon;
- 34 (O) dealing in cocaine, ~~or~~ a narcotic drug, **or**
 35 **methamphetamine** (IC 35-48-4-1) as a Class A felony;
- 36 (P) dealing in a schedule I, II, or III controlled substance
 37 (IC 35-48-4-2) if the amount of controlled substance involved
 38 has an aggregate weight of three (3) grams or more;
- 39 (Q) an offense under IC 9-30-5 (operating a vehicle while
 40 intoxicated) and the person who committed the offense has
 41 accumulated at least two (2) prior unrelated convictions under
 42 IC 9-30-5; or

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1 (R) aggravated battery (IC 35-42-2-1.5).

2 (c) Except as provided in subsection (e), whenever the court
3 suspends a sentence for a felony, it shall place the person on probation
4 under IC 35-38-2 for a fixed period to end not later than the date that
5 the maximum sentence that may be imposed for the felony will expire.

6 (d) The minimum sentence for a person convicted of voluntary
7 manslaughter may not be suspended unless the court finds at the
8 sentencing hearing that the crime was not committed by means of a
9 deadly weapon.

10 (e) Whenever the court suspends that part of an offender's (as
11 defined in IC 5-2-12-4) sentence that is suspendible under subsection
12 (b), the court shall place the offender on probation under IC 35-38-2 for
13 not more than ten (10) years.

14 (f) An additional term of imprisonment imposed under
15 IC 35-50-2-11 may not be suspended.

16 (g) A term of imprisonment imposed under IC 35-47-10-6 or
17 IC 35-47-10-7 may not be suspended if the commission of the offense
18 was knowing or intentional.

19 (h) A term of imprisonment imposed for an offense under
20 IC 35-48-4-6(b)(1)(B) may not be suspended.

21 SECTION 14. IC 35-50-2-9 IS AMENDED TO READ AS
22 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 9. (a) The state may
23 seek either a death sentence or a sentence of life imprisonment without
24 parole for murder by alleging, on a page separate from the rest of the
25 charging instrument, the existence of at least one (1) of the aggravating
26 circumstances listed in subsection (b). In the sentencing hearing after
27 a person is convicted of murder, the state must prove beyond a
28 reasonable doubt the existence of at least one (1) of the aggravating
29 circumstances alleged. However, the state may not proceed against a
30 defendant under this section if a court determines at a pretrial hearing
31 under IC 35-36-9 that the defendant is a mentally retarded individual.

32 (b) The aggravating circumstances are as follows:

33 (1) The defendant committed the murder by intentionally killing
34 the victim while committing or attempting to commit any of the
35 following:

36 (A) Arson (IC 35-43-1-1).

37 (B) Burglary (IC 35-43-2-1).

38 (C) Child molesting (IC 35-42-4-3).

39 (D) Criminal deviate conduct (IC 35-42-4-2).

40 (E) Kidnapping (IC 35-42-3-2).

41 (F) Rape (IC 35-42-4-1).

42 (G) Robbery (IC 35-42-5-1).

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- 1 (H) Carjacking (IC 35-42-5-2).
- 2 (I) Criminal gang activity (IC 35-45-9-3).
- 3 (J) Dealing in cocaine, ~~or~~ a narcotic drug, **or**
- 4 **methamphetamine** (IC 35-48-4-1).
- 5 (2) The defendant committed the murder by the unlawful
- 6 detonation of an explosive with intent to injure person or damage
- 7 property.
- 8 (3) The defendant committed the murder by lying in wait.
- 9 (4) The defendant who committed the murder was hired to kill.
- 10 (5) The defendant committed the murder by hiring another person
- 11 to kill.
- 12 (6) The victim of the murder was a corrections employee,
- 13 probation officer, parole officer, community corrections worker,
- 14 home detention officer, fireman, judge, or law enforcement
- 15 officer, and either:
- 16 (A) the victim was acting in the course of duty; or
- 17 (B) the murder was motivated by an act the victim performed
- 18 while acting in the course of duty.
- 19 (7) The defendant has been convicted of another murder.
- 20 (8) The defendant has committed another murder, at any time,
- 21 regardless of whether the defendant has been convicted of that
- 22 other murder.
- 23 (9) The defendant was:
- 24 (A) under the custody of the department of correction;
- 25 (B) under the custody of a county sheriff;
- 26 (C) on probation after receiving a sentence for the commission
- 27 of a felony; or
- 28 (D) on parole;
- 29 at the time the murder was committed.
- 30 (10) The defendant dismembered the victim.
- 31 (11) The defendant burned, mutilated, or tortured the victim while
- 32 the victim was alive.
- 33 (12) The victim of the murder was less than twelve (12) years of
- 34 age.
- 35 (13) The victim was a victim of any of the following offenses for
- 36 which the defendant was convicted:
- 37 (A) Battery as a Class D felony or as a Class C felony under
- 38 IC 35-42-2-1.
- 39 (B) Kidnapping (IC 35-42-3-2).
- 40 (C) Criminal confinement (IC 35-42-3-3).
- 41 (D) A sex crime under IC 35-42-4.
- 42 (14) The victim of the murder was listed by the state or known by

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the defendant to be a witness against the defendant and the defendant committed the murder with the intent to prevent the person from testifying.

(15) The defendant committed the murder by intentionally discharging a firearm (as defined in IC 35-47-1-5):

(A) into an inhabited dwelling; or

(B) from a vehicle.

(16) The victim of the murder was pregnant and the murder resulted in the intentional killing of a fetus that has attained viability (as defined in IC 16-18-2-365).

(c) The mitigating circumstances that may be considered under this section are as follows:

(1) The defendant has no significant history of prior criminal conduct.

(2) The defendant was under the influence of extreme mental or emotional disturbance when the murder was committed.

(3) The victim was a participant in or consented to the defendant's conduct.

(4) The defendant was an accomplice in a murder committed by another person, and the defendant's participation was relatively minor.

(5) The defendant acted under the substantial domination of another person.

(6) The defendant's capacity to appreciate the criminality of the defendant's conduct or to conform that conduct to the requirements of law was substantially impaired as a result of mental disease or defect or of intoxication.

(7) The defendant was less than eighteen (18) years of age at the time the murder was committed.

(8) Any other circumstances appropriate for consideration.

(d) If the defendant was convicted of murder in a jury trial, the jury shall reconvene for the sentencing hearing. If the trial was to the court, or the judgment was entered on a guilty plea, the court alone shall conduct the sentencing hearing. The jury or the court may consider all the evidence introduced at the trial stage of the proceedings, together with new evidence presented at the sentencing hearing. The court shall instruct the jury concerning the statutory penalties for murder and any other offenses for which the defendant was convicted, the potential for consecutive or concurrent sentencing, and the availability of good time credit and clemency. The defendant may present any additional evidence relevant to:

(1) the aggravating circumstances alleged; or

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(2) any of the mitigating circumstances listed in subsection (c).

(e) Except as provided by IC 35-36-9, if the hearing is by jury, the jury shall recommend to the court whether the death penalty or life imprisonment without parole, or neither, should be imposed. The jury may recommend:

(1) the death penalty; or

(2) life imprisonment without parole;

only if it makes the findings described in subsection (k). The court shall make the final determination of the sentence, after considering the jury's recommendation, and the sentence shall be based on the same standards that the jury was required to consider. The court is not bound by the jury's recommendation. In making the final determination of the sentence after receiving the jury's recommendation, the court may receive evidence of the crime's impact on members of the victim's family.

(f) If a jury is unable to agree on a sentence recommendation after reasonable deliberations, the court shall discharge the jury and proceed as if the hearing had been to the court alone.

(g) If the hearing is to the court alone, except as provided by IC 35-36-9, the court shall:

(1) sentence the defendant to death; or

(2) impose a term of life imprisonment without parole;

only if it makes the findings described in subsection (k).

(h) If a court sentences a defendant to death, the court shall order the defendant's execution to be carried out not later than one (1) year and one (1) day after the date the defendant was convicted. The supreme court has exclusive jurisdiction to stay the execution of a death sentence. If the supreme court stays the execution of a death sentence, the supreme court shall order a new date for the defendant's execution.

(i) If a person sentenced to death by a court files a petition for post-conviction relief, the court, not later than ninety (90) days after the date the petition is filed, shall set a date to hold a hearing to consider the petition. If a court does not, within the ninety (90) day period, set the date to hold the hearing to consider the petition, the court's failure to set the hearing date is not a basis for additional post-conviction relief. The attorney general shall answer the petition for post-conviction relief on behalf of the state. At the request of the attorney general, a prosecuting attorney shall assist the attorney general. The court shall enter written findings of fact and conclusions of law concerning the petition not later than ninety (90) days after the date the hearing concludes. However, if the court determines that the petition is without

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merit, the court may dismiss the petition within ninety (90) days without conducting a hearing under this subsection.

(j) A death sentence is subject to automatic review by the supreme court. The review, which shall be heard under rules adopted by the supreme court, shall be given priority over all other cases. The supreme court's review must take into consideration all claims that the:

(1) conviction or sentence was in violation of the:

(A) Constitution of the State of Indiana; or

(B) Constitution of the United States;

(2) sentencing court was without jurisdiction to impose a sentence; and

(3) sentence:

(A) exceeds the maximum sentence authorized by law; or

(B) is otherwise erroneous.

If the supreme court cannot complete its review by the date set by the sentencing court for the defendant's execution under subsection (h), the supreme court shall stay the execution of the death sentence and set a new date to carry out the defendant's execution.

(k) Before a sentence may be imposed under this section, the jury, in a proceeding under subsection (e), or the court, in a proceeding under subsection (g), must find that:

(1) the state has proved beyond a reasonable doubt that at least one (1) of the aggravating circumstances listed in subsection (b) exists; and

(2) any mitigating circumstances that exist are outweighed by the aggravating circumstance or circumstances.

SECTION 15. [EFFECTIVE JULY 1, 2001] IC 35-48-4-1 and IC 35-48-4-6, both as amended by this act, apply only to offenses committed after June 30, 2001.

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